IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 246 of 1996

Reserved on 30.7.2007

Date of decision 23.8.2007

H.P. Horticulture Produce Appellant

Versus

M/s Electric Equipment Sales Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellant: Mr. O.P.Sharma,Senior Advocate, with Mr.Jaswant Singh, Advocate.

For the Respondent: Mr.Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate.

Rajiv Sharma, J.

This Regular Second Appeal arises out of the judgment and decree passed by the learned District Judge, Solan on 11.10.1995 in Civil Appeal No.19-S/13 of 1995/90.

The brief facts necessary for the adjudication of this second appeal are that the respondent-plaintiff hereinafter referred as the plaintiff for convenience sake, had filed a suit in the Court of sub Judge Ist Class, Kandaghat, District Solan, for recovery of Rs.52,511.05 on account of

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

principal and interest. The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiff carried out extra work of modification of M.C.C.No.4 at Processing Plant of the defendant at Parwanoo at the instance of defendant? OPP

2. Whether extra work was carried by plaintiff to the satisfaction of M/s Industrial Consulting Bureau Ltd. the consultants of the defendant and defendant as alleged? OPP

3. Whether plaintiff is entitled for Rs.31,727.92 paisa as cost of extra items as alleged? OPP

4. Whether plaintiff is entitled to suit amount from the defendant as alleged? OPP

5. Whether the suit is bad for non joinder of necessary parties? OPD

6. Relief.

The trial court had given the following findings on the aforesaid issues:

Issue No.1	Yes
Issue No.2	Yes
Issue No.3	Yes.
Issue No.4	Not completely since plaintiff firm is entitled to less interest.
Issue No.5	No
Relief	Suit decreed with costs as per operative portion of the judgment.

The trial court on the basis of the evidence led by the parties had decreed the suit of the plaintiff and passed a decree for Rs.34016.92 paisa with interest at the rate of 10% per annum on the principal amount from 12.1.1983 till 18.4.1985. The plaintiff was also held entitled for future interest at the rate of 18% per annum on principal amount from the date of the institution of the suit till its realization.

The appellant-defendant hereinafter referred to as the defendant for convenience sake, filed an appeal before the District Judge, Solan. The learned District Judge had framed the following points for consideration:

Point No.1 Whether the impugned judgment and decree are liable to be set aside on the basis of material on record as alleged?

Point No.2 Final order.

The learned District Judge had recorded the following findings:-

Point No.1 No

Final order The appeal dismissed as per operative portion of the judgment

The appeal was dismissed by the learned District Judge, Solan on 11.10.1995.

Initially no substantial question of law was framed at the time of admission but at the time of hearing of this appeal the court was convinced that only question of law framed at Serial No.2 by the appellant required consideration.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The plaintiff was requested to give quotations for the carrying out modification work of M.C.C.No.4 by the defendant Company. The quotations were furnished by the plaintiff and consequently the work order was placed with the plaintiff vide Ex.P4 dated 29.5.1982. It will be apt to reproduce clause inserted in work order Ex.P4 upon which the plaintiff had based his claim as under:

"Alternations in specifications and extra work

The Engineer-in-Charge shall have power to make any alterations, in commission from, addition to, or substitution for, the original

specifications, and instructions that may appear to him to be necessary or advisable during the progress of the work and the Contractor shall be bound to carry out such altered extra items work in accordance with any instructions which may be given to him. The rates for such additions, altered or substituted work shall be settled in consultation with the consultants.

The extra work, if any may be carried out if so required by the Engineer-in-Charge/consultants."

The plaintiff had undertaken extra work and the same was factually executed and found to be correct as per the contents of Ex.P-15. Sh.R.S.Sood, DW-1 had admitted that whatever extra work was entrusted to the plaintiff, it was entitled to the payment thereof from the defendant. He had also testified that the extra work was done under the supervision of the defendant. While replying to notice Ex.P-20 in its reply the defendant did not deny the execution of extra work by the plaintiff. The extra work had been done by the plaintiff as per the express condition mentioned in Ex.P-4. The extra work executed by the plaintiff as mentioned in Ex.DX, Ex.DZ and Ex.DZ/1 had been signed by Mr.Bajaj who was Foreman Electrical of the defendant Corporation. Sh. Upinder Kumar, PW-1 had categorically stated that whatever extra work was carried out was at the instance of the defendant.

It is evident from the judgment of the District Judge that the defendant had not disputed the finding recorded by the trial court about the decretal amount. But the dispute was with regard to interest only. Before the trial court the defendant had argued that the plaintiff was only entitled to interest at the rate of 6% interest per annum though the plaintiff was claiming interest at the rate of 24% p.a. The trial court had decreed the suit with interest at the rate of 18% p.a. The lower appellate court had rightly not interfered with the rate of

interest granted by the trial court. The courts below have rightly constructed documents Ex.P-4 and Ex.P-15 in right perspective as discussed here-in-above.

The upshot of the above discussion is that there is no scope for interfering in the present regular second appeal, especially when no question of law much less any substantial question of law arises for determination in this appeal.

For the reasons recorded, finding no merit in this appeal the same is hereby dismissed with no order as to costs.

August 23,2007(g) **(Rajiv Sharma), J.**